

Senate Bill 555

By: Senators Chapman of the 3rd, Whitehead, Sr. of the 24th, Wiles of the 37th, Shafer of the 48th, Henson of the 41st and others

A BILL TO BE ENTITLED

AN ACT

To amend Title 36 of the Official Code of Georgia Annotated, relating to local government, so as to provide an exception to the perpetual existence of downtown development authorities; to provide for quorums, actions, meetings, and records of downtown development authorities; to provide for dissolution of downtown development authorities activated by municipal resolutions; to change certain provisions relating to creation of development authorities, appointment and terms of directors, quorum, and adopting and filing of resolution of need; to provide for open and public meetings and records; to change certain provisions relating to directors of development authorities, compensation, adoption of bylaws, delegation of powers and duties, conflicts of interest, and audits; to change certain provisions relating to perpetual existence and dissolution of development authorities activated by county or municipal resolutions; to change certain provisions relating to ethics and conflicts of interest of members of downtown development authorities; to change certain provisions relating to annual local government finances reports and local independent authority indebtedness reports, assistance by the Department of Community Affairs, and community indicator reports; to provide for notices and hearings prior to consideration of certain tax abatements or exemptions by local governing authorities; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended in Chapter 42, relating to downtown development authorities, by striking subsection (c) of Code Section 36-42-7, relating to qualifications and reimbursement of directors, election of officers, and training, and inserting in lieu thereof the following:

"(c) The directors shall elect one of their members as ~~chairman~~ chairperson and another as vice ~~chairman~~ chairperson and shall also elect a secretary and a treasurer or a

1 secretary-treasurer, either of whom may but need not be a director. The directors shall
2 receive no compensation for their services but shall be reimbursed for actual expenses
3 incurred by them in the performance of their duties. Each authority shall have perpetual
4 existence, except as otherwise provided by Code Section 36-42-12.1."

5 SECTION 2.

6 Said title is further amended in said Chapter 42 by adding a new Code section to read as
7 follows:

8 "36-42-7.1.

9 A majority of the directors shall constitute a quorum, but no action may be taken by the
10 board without the affirmative vote of a majority of the full membership of the board. All
11 actions taken by the board at any meeting shall be recorded in minutes thereof, and all
12 meetings of the board shall be subject to the provisions of Chapter 14 of Title 50. Records
13 of the authority shall be subject to the provisions of Article 4 of Chapter 18 of Title 50."

14 SECTION 3.

15 Said title is further amended in said Chapter 42 by adding a new Code section to read as
16 follows:

17 "36-42-12.1.

18 (a)(1) If an authority does not have any outstanding unpaid bonds or bond anticipation
19 notes, the authority may be dissolved by adoption of an appropriate resolution by the
20 governing authority of the municipal corporation.

21 (2) If an authority does not have any outstanding unpaid bonds or bond anticipation notes
22 and has not within a calendar year ending on or after December 31, 2005, conducted an
23 official meeting with a quorum present, then the authority shall be dissolved by operation
24 of law.

25 (b) If an authority previously activated for a municipal corporation is dissolved as provided
26 in subsection (a) of this Code section, all assets and debts and rights and obligations of the
27 former authority shall devolve to the parent municipal corporation.

28 (c)(1) Where an authority is dissolved as provided in paragraph (1) of subsection (a) of
29 this Code section, it shall cease to exist as of the effective date specified in the
30 appropriate resolution or resolutions.

31 (2) Where an authority is dissolved as provided in paragraph (2) of subsection (a) of this
32 Code section, it shall cease to exist as of January 1 of the immediately following calendar
33 year or on July 1, 2006, whichever occurs last.

(3) The dissolution of an authority shall not prevent the subsequent activation of a new authority under this chapter for the same local government in the same manner as otherwise specified in this chapter."

SECTION 4.

Said title is further amended by striking subsection (b) of Code Section 36-62-4, relating to creation of development authorities, appointment and terms of directors, quorum, and adopting and filing of resolution of need, and inserting in lieu thereof the following:

"(b) A majority of the directors shall constitute a quorum, but no action may be taken by the board without the affirmative vote of a majority of the full membership of the board. All actions taken by the board at any meeting shall be recorded in minutes thereof, and all meetings of the board shall be subject to the provisions of Chapter 14 of Title 50. Records of the authority shall be subject to the provisions of Article 4 of Chapter 18 of Title 50."

SECTION 5.

Said title is further amended by striking subsection (e) of Code Section 36-62-5, relating to directors of development authorities, compensation, adoption of bylaws, delegation of powers and duties, conflicts of interest, and audits, and inserting in lieu thereof the following:

"(e)(1)(A) The provisions of Code Section 45-10-3 shall apply to all directors of the authority, and a director of the authority shall not engage in any transaction with the authority.

~~(B) The provisions of paragraph (9) of Code Section 45-10-3 and subparagraph (A) of this paragraph shall be deemed to have been complied with and the authority may purchase from, sell to, borrow from, loan to, contract with, or otherwise deal with any director or any organization or person with which any director of the authority is in any way interested or involved, provided (1) that any interest or involvement by such director is disclosed in advance to the directors of the authority and is recorded in the minutes of the authority, (2) that no director having a substantial interest or involvement may be present at that portion of an authority meeting during which discussion of any matter is conducted involving any such organization or person, and (3) that no director having a substantial interest or involvement may participate in any decision of the authority relating to any matter involving such organization or person. As used in this subsection, a 'substantial interest or involvement' shall mean any interest or involvement which reasonably may be expected to result in a direct financial benefit to such director as determined by the authority, which determination shall be final and not subject to review.~~

~~(2) Nothing contained in paragraph (1) of this subsection or in Code Section 45-10-3 shall be deemed to prohibit any director who is present at any meeting or who participates in any decision of the authority from providing legal services in connection with any of the undertakings of the authority or from being paid for such services."~~

SECTION 6.

Said title is further amended by striking Code Section 36-62-14, relating to perpetual existence and dissolution of development authorities activated by county or municipal resolution, and inserting in lieu thereof the following:

"36-62-14.

(a) Except as otherwise provided in this Code section, an authority created pursuant to this chapter shall have perpetual existence.

(b)(1) If an authority does not have any outstanding unpaid bonds or bond anticipation notes, the authority may be dissolved as provided in this subsection. If the authority was activated for a single county or municipal corporation as provided in Code Section 36-62-4, the authority may be dissolved by adoption of an appropriate resolution by the governing authority of such county or municipal corporation. If the authority was activated for two or more local governments as provided in Code Section 36-62-5.1, the authority may be dissolved by the adoption of appropriate concurrent resolutions by the governing authorities of all such local governments.

(2) If an authority does not have any outstanding unpaid bonds or bond anticipation notes and has not within a calendar year ending on or after December 31, 2005, conducted an official meeting with a quorum present, then the authority shall be dissolved by operation of law.

(c)(1) If an authority previously activated for a single county or municipal corporation is so dissolved as provided in subsection (b) of this Code section, all assets and debts and rights and obligations of the former authority shall devolve to the parent county or municipal corporation.

(2)(A) If an authority previously activated for two or more local governments is so dissolved as provided in paragraph (1) of subsection (b) of this Code section, all assets and debts and rights and obligations of the former authority shall devolve to the parent local governments in such proportions and manner as shall be specified in the concurrent resolutions dissolving the authority.

(B) If an authority previously activated for two or more local governments is dissolved as provided in paragraph (2) of subsection (b) of this Code section, all assets and debts and rights and obligations of the former authority shall devolve to the parent local

governments in such proportions and manner as shall be specified in concurrent resolutions of the local governments adopted within 60 days after the date of dissolution of the authority.

(d)(1) Where an authority is dissolved as provided in paragraph (1) of subsection (b) of this Code section, it shall cease to exist as of the effective date specified in the appropriate resolution or resolutions.

(2) Where an authority is dissolved as provided in paragraph (2) of subsection (b) of this Code section, it shall cease to exist as of January 1 of the immediately following calendar year or on July 1, 2006, whichever occurs last.

(3) The dissolution of an authority, ~~however~~, shall not prevent the subsequent activation of a new authority under this chapter for the same local government or local governments, in the same manner as otherwise specified in this chapter."

SECTION 7.

Said title is further amended by striking Code Section 36-62A-1, relating to ethics and conflicts of interest of members of downtown development authorities, and inserting in lieu thereof the following:

"36-62A-1.

~~(a)(1)~~ All directors and members of any downtown development authority created pursuant to Chapter 42 of this title, known as the 'Downtown Development Authorities Law,' or of any authority created by or pursuant to a local constitutional amendment, whether for the purpose of promoting the development of trade, commerce, industry, and employment opportunities or for other purposes, to the extent that the Constitution of Georgia authorizes the General Assembly by law to define further and to enlarge or restrict the powers and duties of any such authority created by or pursuant to a local constitutional amendment shall comply with the provisions of Code Section 45-10-3, relating to a code of ethics of members of boards, commissions, and authorities and shall not engage in any transaction with the authority.

~~(2) The provisions of paragraph (9) of Code Section 45-10-3 and of paragraph (1) of this subsection shall be deemed to have been complied with and any such authority may purchase from, sell to, borrow from, loan to, contract with, or otherwise deal with any director or member or any organization or person with which any director or member of said authority is in any way interested or involved, provided (1) that any interest or involvement by such director or member is disclosed in advance to the directors or members of the authority and is recorded in the minutes of the authority, (2) that no director having a substantial interest or involvement may be present at that portion of an~~

~~authority meeting during which discussion of any matter is conducted involving any such organization or person, and (3) that no director having a substantial interest or involvement may participate in any decision of the authority relating to any matter involving such organization or person. As used in this subsection, a 'substantial interest or involvement' shall mean any interest or involvement which reasonably may be expected to result in a direct financial benefit to such director or member as determined by the authority, which determination shall be final and not subject to review.~~

~~(b) Nothing contained in subsection (a) of this Code section or in Code Section 45-10-3 shall be deemed to prohibit any director who is present at any decision of the authority from providing legal services in connection with any of the undertakings of the authority or from being paid for such services."~~

SECTION 8.

Said title is further amended by striking Code Section 36-81-8, relating to annual local government finances reports and local independent authority indebtedness reports, assistance by the Department of Community Affairs, and community indicator reports, and inserting in lieu thereof the following:

"36-81-8.

(a) As used in this Code section, the term 'local independent authority' means each local public body corporate and politic created in and for a county, municipality, consolidated government, or combination thereof, which is authorized to issue bonds under the Constitution and laws of this state.

(b)(1)(A) Each unit of local government shall submit an annual report of local government finances to the Department of Community Affairs. The report shall include the revenues, expenditures, assets, amounts of local ad valorem property tax exemptions granted for purposes of encouraging development or redevelopment, and debts of all funds and agencies of the local government, and other such information as may be reasonably requested by the department.

(B) Each unit of local government which levies a tax pursuant to Article 3 of Chapter 13 of Title 48 shall also submit a schedule of all revenues therefrom which are expended for the promotion of tourism, conventions, and trade shows or any other tourism related purpose which is specified under Code Section 48-13-51. Such schedule shall identify both the project or projects involved and the contracted entity involved in each such expenditure.

(2) Each local independent authority shall submit an annual report of indebtedness to the Department of Community Affairs. Such report shall include the revenues, expenditures,

1 assets, and debts of all funds of the local independent authority and shall describe any
2 actions taken by such local independent authority to incur indebtedness.

3 (3) The local government finances report and the local independent authority
4 indebtedness report shall be filed on forms promulgated by the department; and shall be
5 submitted within the requested time periods established by the department.

6 (4) The current annual local government finances reports and local independent authority
7 indebtedness reports filed with the department in 2007 and thereafter shall be made
8 available for inspection and viewing by the public on the department's Internet website.
9 Each local government or local independent authority that files such a report shall also
10 cause a summary of the same to be published in the applicable county legal organ not
11 later than 30 days after filing such report. Such summary shall be in simplified form,
12 shall be divided into logically arranged captioned sections, and shall contain readable
13 language using layperson's terms.

14 (c) The department shall have the authority to require local governments and local
15 independent authorities to submit the reports as provided for in subsection (b) of this Code
16 section as a condition of such local government or local independent authority receiving
17 state appropriated funds from the department. Upon the receipt of the report of local
18 government finance from a local government or the report of local independent authority
19 debt from a local independent authority, the department is authorized to release any state
20 appropriated grant funds that may be due at such time to the local government or the local
21 independent authority.

22 (d) The department's implementation of subsections (b) and (c) of this Code section shall
23 be subject to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act'; and the
24 department is specifically directed to promulgate the forms provided for in subsection (b)
25 of this Code section in the manner provided for promulgation of rules under Chapter 13 of
26 Title 50.

27 (e) Utilizing information contained in audit reports of local governments filed with the
28 state auditor, the report of county or municipal finances filed with the Department of
29 Community Affairs, and other available state or federal information of public record, the
30 Department of Community Affairs shall prepare annually a report on local government
31 finances. Utilizing information contained in reports of indebtedness returned to the
32 Department of Community Affairs, the Department of Community Affairs shall prepare
33 annually a report on indebtedness of local independent authorities. The local government
34 finances report shall be filed on January 15 of each year, ~~beginning January 15, 1985,~~ and
35 the local independent authority indebtedness report shall be filed on January 15 of each
36 year, ~~beginning January 1, 1990,~~ with the Governor, the Speaker of the House of

Representatives, the President of the Senate, the ~~chairman~~ chairperson of the House Ways and Means Committee, the ~~chairman~~ chairperson of the House State Planning and Community Affairs Committee, the ~~chairman~~ chairperson of the Senate Finance and Public Utilities Committee, and the ~~chairman~~ chairperson of the Senate State and Local Governmental Operations Committee, as well as with the chief elected official or chief appointed official of each local unit of government and each local independent authority and member of the General Assembly upon request.

(f) The local government finances report and the local independent authority indebtedness report shall be organized, within the limits of available resources, in such a manner as to allow for reasonable comparative analysis of local government revenues and expenditures and for reasonable comparative analysis of local independent authority debt.

(g) The department, in addition to its other duties, shall assist local units of government and local independent authorities in fulfilling the requirements of this article. The department shall coordinate its technical assistance efforts with the state auditor, the University System of Georgia, the Association County Commissioners of Georgia, the Georgia Municipal Association, and the Georgia Society of Certified Public Accountants and should coordinate with any other organizations interested and currently active in local government financial management so as to ensure that coordination of training and assistance is maintained. The department may contract or subcontract with other public or private agencies to provide assistance to local units of government or local independent authorities.

(h) The department, either in conjunction with the local government finances report or separately, shall prepare a community indicators report for each local unit of government having annual expenditures of \$250,000.00 or more as indicated pursuant to the most recent Report of Local Government Finances. The community indicators report shall include data on local government services, administration, and community characteristics. The department shall have the authority to require local governments to submit reports on local government services and operations as a condition of such local government receiving state appropriated funds from the department. Such reports shall be obtained utilizing the local government finance survey as provided in subsection (b) of this Code section and the local government operations survey collected by the department. The department shall develop the community indicators report in cooperation with the Association County Commissioners of Georgia and the Georgia Municipal Association and shall prepare annually the report on or before December 31, 1998, and annually thereafter."

SECTION 9.

Said title is further amended in Chapter 88, the 'Enterprise Zone Employment Act of 1997,' by adding a new Code section to read as follows:

"36-88-9.1.

Prior to approving any tax exemption or abatement pursuant to this chapter, the local governing authority shall conduct a public hearing on the matter. The local governing authority shall publish in the county legal organ at least 30 days in advance of the hearing a written notice of the date, time, and location of such hearing and an itemization of the tax exemption or abatement to be considered by the local governing authority. No action shall be taken by the local governing authority on such proposed tax exemption or abatement until at least 15 days after such public hearing."

SECTION 10.

All laws and parts of laws in conflict with this Act are repealed.